JACK KIM
FRANCOISE KIM

IBLA 86-1413, 86-1414 Decided July 13, 1988

Appeals from decisions of the Anchorage District Office, Bureau of Land Management, holding trade and manufacturing site notices of location for cancellation. AA-52208, AA-52209.

Affirmed.

1. Act of May 14, 1898--Act of March 3, 1927--Alaska: Trade and Manufacturing Sites

   Trapping is not a qualifying use of land under the Act of May 14, 1898, which will support a trade and manufacturing site claim; instead, trapping is a use appropriate to acquisition of a headquarters site, pursuant to the Act of Mar. 3, 1927. 43 U.S.C. | 687a (1982).

2. Act of May 14, 1898--Act of March 3, 1927--Alaska: Headquarters Sites--Alaska: Trade and Manufacturing Sites

   Because sec. 703(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2787, repealed the trade and manufacturing site and headquarters site law, effective Oct. 21, 1986, no new claim may be initiated under that law on or after that date.

APPEARANCES: Jack Kim and Francoise Kim, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Jack Kim and Francoise Kim have appealed from two decisions of the Anchorage District Office, Bureau of Land Management (BLM), each dated June 11, 1986, holding trade and manufacturing site notices of location AA-52208 and AA-52209, respectively, for cancellation. BLM stated that their trapping operations did not qualify as a productive industry under section 10 of the Act of May 14, 1898, 43 U.S.C. | 687a (1982), and 43 CFR 2562.3(d)(1). 1/

1/ The regulation cited by BLM, 43 CFR 2562.3(d)(1), describes what must be shown in an application to purchase a trade and manufacturing site claim. Such an application, with the required proof or showing, must be filed within 5 years after the filing of a notice of location. 43 CFR 2562.3(c).

On August 29, 1983, the Secretary of the Interior announced the opening of lands in the Slana area of Alaska for trade and manufacturing site, homesite, and headquarters site locations. 48 FR 39066 (Aug. 29, 1983). On October 3, 1983, the Kims filed their trade and manufacturing site notices of location for lands in that area. Each notice described approximately 80 acres of land in adjacent parcels in sec. 24, T. 11 N., R. 8 E., Copper River Meridian. Both notices specified that the sites were used for trapping.

On April 19, 1984, BLM issued notices to the Kims stating that trapping was not a qualifying use for a trade and manufacturing site and advising them to amend their notices to apply for headquarters sites of up to 5 acres. By letters dated May 18, 1984, the Kims responded that 5 acres would not support a viable trapping operation and that 80 acres were needed. They stated that they depended on the meat and furs and emphasized that they were experienced and conscientious trappers.

By letters dated June 14, 1984, BLM again informed them that trapping was not a "productive industry" for purposes of the trade and manufacturing site law and that they should amend their notices to apply for headquarters sites instead. In its letter to Jack Kim, BLM stated that it was not the intention of the trade and manufacturing site law to allow individuals to receive title to lands they had not improved or developed in conjunction with a productive trade or business. The record contains no response to these letters.

When BLM issued its June 11, 1986, decisions holding the Kims' notices of location for rejection, it stated in each case:

> If your proposed use of the site is only as a site on which your trapping headquarters will be established, with no actual trade, manufacture, or other productive industry conducted upon the land itself, it is advisable that you amend your filing to a headquarters site of no more than five acres.

In its decisions, BLM allowed the Kims 30 days in which to file amendments. BLM noted that failure to respond in the time allowed would result in cancellation of the notices of location. Rather than amend their notices in the time allowed, the Kims filed these appeals. 2/ Because these cases present the same factual context and legal issues, they were consolidated for consideration on appeal.

2/ The BLM decisions holding the Kims' notices of location for rejection were interlocutory decisions and the 30-day period for filing a notice of appeal did not commence until expiration of the time for compliance. Therefore, the Kims' notices of appeal, filed within the time for compliance, were actually objections to actions proposed to be taken and, thus, protests. See Randall J. Gerlach, 90 IBLA 338 (1986). However, since returning these case files to BLM for consideration of the Kims' objections as protests would serve no useful purpose, we will adjudicate these cases on their merits. See Beard Oil Co., 97 IBLA 66, 68 (1987).

In their statements of reasons for appeal, appellants argue that nothing precludes the consideration of trapping as a productive industry under the trade and manufacturing site law. They argue that 5 acres is insufficient for their use and that the 80-acre parcels are the minimum necessary. They declare that the BLM decisions are arbitrary, unwarranted, and violative of the letter and spirit of the trade and manufacturing site program in the Slana district.

[1] Section 10 of the Act of May 14, 1898, 30 Stat. 413, as amended by the Act of March 3, 1927, 44 Stat. 1364, 43 U.S.C. | 687a (1982), authorizes the purchase of trade and manufacturing sites and headquarters sites. It provides:

> Any citizen * * * in the possession of and occupying public lands in Alaska in good faith for the purposes of trade, manufacture, or other productive industry, may each purchase one claim only not exceeding eighty acres of such land for any one person, association, or corporation, at $2.50 per acre, upon submission of proof that said area embraces improvements of the claimant and is needed in the prosecution of such trade, manufacture, or other productive industry * * * and any citizen * * * engaged in trade, manufacture, or other productive industry may purchase one claim, not exceeding five acres, of unreserved public lands * * * as a homestead or headquarters. [Emphasis supplied.]

Appellants contended that their trapping operations constitute a productive industry, suitable for 80-acre trade and manufacturing sites. However, as BLM indicated repeatedly, trapping was not the type of activity envisioned for trade and manufacturing site recipients. Trapping is an activity which can involve any number of acres, but only intermittently, and without necessarily involving constructed improvements on the land. The need to show "that said area embraces improvements," as specified in the statute, is inconsistent with appellants' understandable desire to ensure undeveloped trapping areas.

The cases have emphasized the need to show improvements constructed on the land, incident to an ongoing business. United States v. Stratman, 37 IBLA 352 (1978), aff'd, No. A 74-103 (D. Alaska Aug. 7, 1979); Adolph T. Gray, 17 IBLA 410, 81 I.D. 631 (1974). Agricultural and horticultural uses have been held to be nonqualifying uses of trade and manufacturing sites. United States v. Bunch (On Judicial Remand), 64 IBLA 318 (1982) (grazing); Monte Lyons, 74 I.D. 11 (1967) (greenhouses); see John G. Brady, 26 L.D. 305, 308 (1898). Only when an intensive use involving improvements is shown can undeveloped land necessary to that use also be claimed as a trade and manufacturing site. Schade v. Andrus, 638 F.2d 122, 124 (9th Cir. 1981). See also United States v. Tippetts, 29 IBLA 348, 351 (1977).

[2] BLM recommended that appellants amend their notices and seek headquarters sites. This is consistent with 43 CFR 2563.0-2(a) which provides:

> The purpose of this statute [Act of March 3, 1927] is to enable fishermen, trappers, manufacturers, or others engaged in productive industry in Alaska to purchase small tracts of unreserved land in the State, not exceeding 5 acres, as homesteads or headquarters. [Emphasis added.]

Therefore, while appellants are correct that trapping may be a productive industry, Departmental case law and the regulations make clear that trapping activities alone may support nothing more than a headquarters site.

The authorizing statute, 43 U.S.C. | 687a (1982), was in effect when appellants filed their trade and manufacturing site notices and when BLM issued its decisions. However, that statute was repealed by section 703(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2787, effective October 21, 1986. As a result, no new headquarters site or trade and manufacturing site claims may now be initiated. Therefore, the opportunity for appellants to amend their notices or file new claims for headquarters sites no longer exists.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

John H. Kelly
Administrative Judge